

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: DAVID E. JONES,

Debtor.

BKY. No.: 04-35079
Chapter 7

**NOTICE OF HEARING AND
MOTION FOR RELIEF
FROM AUTOMATIC STAY**

TO: DAVID E. JONES AND THEIR ATTORNEY, MARK C.
HALVERSON, HALVERSON & ASSOCIATES, P.O. BOX 3544,
MANKATO, MN 56002-3544.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 4, 2004 at 10:30 A.M. in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota, or as soon as counsel may be heard before The Honorable Gregory F. Kishel, Chief Judge of the United States Bankruptcy Court.

3. Any response to this motion must be filed and delivered not later than September 29, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 23, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

MOTION TO LIFT AUTOMATIC STAY

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on August 30, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtor that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default from August 1, 2004 to date in the amount of \$747.53 per month, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$110,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$15,880.00. According to the Debtor the fair market value of the property is estimated at \$128,000.00.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: September 8, 2004

By: /s/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(D1848)

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

WELLS FARGO BANK, N.A.

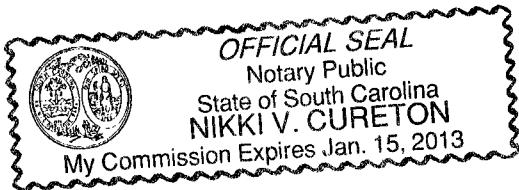
Dated: September 8, 2004

By: Karan Abernethy
Karan Abernethy
Bankruptcy Supervisor
3476 Stateview Blvd.
Fort Mill, SC 29715

Subscribed to and sworn before me this

8th day of September, 2004.

Nikki V. Cureton
Notary



UNITED STATES BANKRUPTCY COURT
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**AFFIDAVIT OF MOVANT'S
BANKRUPTCY SUPERVISOR**

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtor.

2. That the payments due under said mortgage are in default from August 1, 2004 to date in the amount of \$747.53 per month, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$110,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$15,880.00. According to the Debtor the fair market value of the property is estimated at \$128,000.00.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

VERIFICATION

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 8, 2004.

WELLS FARGO BANK, N.A.

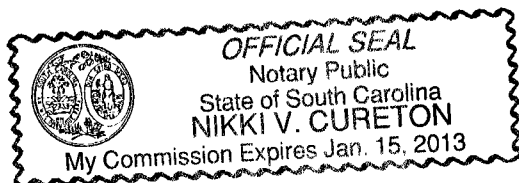
By: Karan Abernethy
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

8th day of September, 2004.

Nikki V. Cureton
Notary Public



No. 45452
Registration Tax hereon of \$ 250.70
Paid the 5th day of November 2003.
MYRNA SCHOEB (County Treasurer) signed by [Signature]
Countersigned and payment recorded
ROBERT BRUNS (County Auditor) signed by [Signature]

County Recorder
Nicollet County, Minnesota 20
Document No. **253455**
Certified Recorded on 11-05-2003 at 09:00 AM
Well Certificate: _____ # Pages 15
Rec'd: at title company Fee: \$ 20.00

[Space Above This Line For Recording Data]

MORTGAGE

Return To:
WELLS FARGO HOME MORTGAGE, INC.
3601 MINNESOTA DR. SUITE 200
BLOOMINGTON, MN 55435

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated OCTOBER 28, 2003 together with all Riders to this document.

(B) "Borrower" is DAVID E JONES, A SINGLE PERSON

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is WELLS FARGO HOME MORTGAGE, INC.

Lender is a CORPORATION
organized and existing under the laws of THE STATE OF CALIFORNIA
Lender's address is P.O. BOX 10304, DES MOINES, IA 503060304

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated OCTOBER 28, 2003
The Note states that Borrower owes Lender ONE HUNDRED NINE THOUSAND AND 00/100

Dollars
(U.S. \$****109,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than NOVEMBER 01, 2033

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY _____ [Type of Recording Jurisdiction]

of NICOLLET

[Name of Recording Jurisdiction]:

The South Half (S 1/2) of Lot One (1) and Two (2), EXCEPT the East 19.61 feet of Lot Two (2) of Block One Hundred Forty-five (145) in the Town (now City) of St. Peter, Minnesota, according to the Amended Plat.

TAX STATEMENTS SHOULD BE SENT TO: WELLS FARGO HOME MORTGAGE, INC., P.O. BOX 10304, DES MOINES, IA 503060304

Parcel ID Number:
427 W JEFFERSON AVE.
ST. PETER
("Property Address"):

which currently has the address of
[Street]
[City], Minnesota 56082 [Zip Code]

253455

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

DAVID E JONES (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
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Chapter 7

**MEMORANDUM IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

MEMORANDUM OF LAW

I. Factual Background

The Debtor filed his petition herein on August 30, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Nicollet County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

The South Half (S ½) of Lot One (1) and Two (2), EXCEPT the East 19.61 feet of Lot Two (2) of Block One Hundred Forty-five (145) in the Town (now City) of St. Peter, Minnesota.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$110,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$15,880.00. According to the Debtor the fair market value of the property is estimated at \$128,000.00. The payments due under said mortgage are in default from August 1, 2004 to date in the amount of \$747.53 per month, plus accrued late charges and inspection fees.

II. Argument

GOOD CAUSE EXISTS TO GRANT THE MOVANT
RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtor has not offered any form of adequate protection to the Movant as the loan debt increases. The combined encumbrances on the property total approximately \$125,880.00 and the fair market value of the property is estimated at \$128,000.00. The Debtor lacks any equity in said real property.

In view of the Debtor's inability to make payments toward his loan obligation, the Movant's interest in the real property of the Debtor is not adequately protected. A continuing default by the Debtor will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtor is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtor. The Debtor's offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: September 8, 2004

By: /e/ Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(D1848)

UNITED STATES BANKRUPTCY COURT
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UNSWORN DECLARATION FOR PROOF OF SERVICE

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The Academy Professional Building, 25 North Dale Street, 2nd Floor, St. Paul, MN 55102-2227 declares that on September 14, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Michael S. Dietz, Trustee
505 Marquette Bldg.
P.O. Box 549
Rochester, MN 55903

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

David E. Jones
427 W. Jefferson St.
St. Peter, MN 56082

Mark C. Halverson
Halverson & Associates
P.O. Box 3544
Mankato, MN 56002-3544

Wells Fargo Financial Bank
P.O. Box 5058
Sioux Falls, SD 57117-5058

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: September 14, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2nd Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(D1848)

UNITED STATES BANKRUPTCY COURT
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ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on October 4, 2004 in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

The South Half (S ½) of Lot One (1) and Two (2), EXCEPT the East 19.61 feet of Lot Two (2) of Block One Hundred Forty-five (145) in the Town (now City) of St. Peter, Minnesota,
Nicollet County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: _____

The Honorable Gregory F. Kishel
Chief Judge of the U.S. Bankruptcy Court